

Conversely, claimant argues the August 8, 2003 Preliminary Decision should be affirmed. Claimant argues that she delivered a written claim to respondent shortly after the accident. Claimant also contends a handwritten document she furnished respondent on September 20, 2001, which described the accident and which respondent required before providing claimant with additional medical care also suffices as a written claim. Finally,

claimant argues that a handwritten note delivered to respondent requesting her temporary total disability checks be mailed to a new address also suffices as a written claim for benefits.

The only issue before the Board on this appeal is whether claimant served timely written claim on respondent or its insurance carrier.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and after reviewing the parties' arguments, the Board finds and concludes that the August 8, 2003 Preliminary Decision should be affirmed.

On September 14, 2001, claimant injured her right knee when a 7th grade boy slipped while climbing a six-foot wall on an obstacle course and accidentally kicked or hit claimant's right knee. Claimant immediately reported the incident to respondent.

On September 20, 2001, claimant prepared a document in which she described the accident. According to Robin Cooper Cornejo, who also testified on respondent and its insurance carrier's behalf at the preliminary hearing and who is one of respondent's co-executive directors, that document was required in order for claimant to obtain medical treatment.

Also on September 20, 2001, claimant first saw Dr. Anthony R. Justesen of Paola, Kansas, for her right knee. Dr. Justesen provided claimant with conservative care and eventually referred her to an orthopedic specialist, Dr. Daniel D. Schaper of Olathe, Kansas. According to claimant, "workers' compensation" set the appointment with Dr. Schaper and sent a "nurse advocate" to the first visit with the doctor, which was October 10, 2001. Claimant testified the nurse advocate had several papers for her to prepare, one of which was a claim form which claimant allegedly signed and delivered to respondent that same day. According to claimant, she was specifically advised to deliver the claim form to respondent. But Ms. Cornejo testified that she could not find a written claim form in claimant's workers compensation claim file.

Dr. Schaper sent claimant for physical therapy. On November 12, 2001, the doctor saw claimant in follow-up and recommended additional therapy. At that time the doctor also commented that claimant may need an arthroscopy in the event her knee did not improve.

On November 12, 2001, insurance adjuster W. Kent Ingham spoke with claimant over the telephone and advised claimant the insurance carrier would not pay any additional medical bills and that it was closing claimant's case as the insurance carrier believed that

claimant had missed the November 12, 2001 appointment with Dr. Schaper. On that same date, Mr. Ingham also wrote claimant advising that the carrier had terminated her temporary total disability benefits as claimant had allegedly missed a follow-up medical appointment and that she had not been attending physical therapy. Mr. Ingham's letter read:

This morning Dr. Shaper's *[sic]* office called to advise that you had not kept your re-scheduled appointment. I have also been informed that you have not attended physical therapy since 11/02/2001.

The only assumption that can be made is that you no longer have need for medical treatment. Therefore, I have stopped your TTD effective 11/07/2001. If you are interested in pursuing your claim please call.

Whether or not claimant served respondent with a timely written claim for workers compensation benefits hinges on claimant's credibility. The Judge did not make a specific finding regarding claimant's credibility. It is, however, implied in the Judge's order that he found claimant credible. At this juncture of the claim, the Board finds claimant's testimony credible that on October 10, 2001, she signed and delivered a claim form to respondent. As claimant served respondent with written claim for workers compensation benefits within 200 days of the accident, claimant has satisfied the Workers Compensation Act's written claim requirement. See K.S.A. 44-520a.

**WHEREFORE**, the Board affirms the August 8, 2003 Preliminary Decision.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2003.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
Robert H. Foerschler, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director